

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE:)
) CASE NO. 16-10556-BFK
TERENCE MICHAEL HYNES,)
KATHRYN WILSON HYNES,)
) Chapter 11
Debtors.)

**UNITED STATES' OPPOSITION TO DEBTORS'
APPLICATION TO EMPLOY SPECIAL TAX COUNSEL**

The United States of America, on behalf of the IRS, hereby opposes Debtors' application to employ Burton J. Haynes ("Applicant") as special tax counsel and accountant (ECF No. 27) and represents as follows.

STATEMENT OF FACTS

Debtors filed a bankruptcy petition seeking relief under Chapter 11 on or about February 18, 2016.

The Disclosure of Compensation filed with the Petition indicates that the Applicant provided the \$2,400 received by Debtors' counsel and the \$1,717.00 filing fee. These amounts came "from money paid to [the Applicant] by the Debtors." ECF No. 1 at 13.

According to Debtors' Form 107 (Statement of Financial Affairs), within 1 year before this bankruptcy petition was filed, Debtors paid the Applicant \$4,800 in "Legal fees

in connection with IRS collection matters.” ECF No. 17, at 34. The dates of these payments to the Applicant are not disclosed. *Id.*

At the 341 Meeting of Creditors, Debtor Terrence Hynes (who is an attorney himself) was not able to explain whether this money from the Applicant was a gift or a loan, or whether it was Debtors’ own money that the Applicant held in trust. The Applicant is not listed as a creditor on Debtor’s schedules.

The Applicant’s declaration in support of the motion to employ does not specify in any detail his prior relationship with the Debtors except that he “represented the Debtors prior to the filing of their bankruptcy.” ECF No. 27-1.

ARGUMENT

Applications for employment are governed by 11 U.S.C. § 327 and Fed. R. Bankr. P. 2014. The applicant must provide a verified statement setting forth the person's connections with the debtor, creditors or any other party in interest, their respective attorneys and accountants, the United States trustee or any person employed in the office of the United States trustee. Rule 2014(a). This disclosure is necessary to allow all parties and the court to review any conflicts, competency, and necessity of the services. *In re Arkansas Co.*, 798 F.2d 645, 648 (3d Cir. 1986) (court required to review competency, experience and integrity); *Farinash v. Vergos (In re Aultman Enters.)*, 264 B.R. 485, 490 (E.D. Ten. 2001) (purpose of approval is not just to control costs but also to "prevent unscrupulous individuals from taking advantage of the bankruptcy process").

In this case, in the 12 months prior to the bankruptcy being filed, Debtors paid the Applicant \$4,800 for legal services, and then the Applicant paid (or lent, or made a gift of)

around \$4,200 to Debtors to cover their bankruptcy expenses. The circumstances of these transfers, without further explanation, create an appearance of impropriety and make it impossible to evaluate whether the Applicant should be employed by the estate.

The appearance of impropriety is strengthened by Debtors' inability to explain whether this money was a gift or a loan from the Applicant and by the Applicant's failure to disclose the transfer on his application.

The United States has no opposition to the estate obtaining competent and disinterested tax advice and accounting help. However, the circumstances surrounding Debtors' financial relationship with the Applicant, and lack of adequate disclosure, indicate that this application should not be approved.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the application to employ Mr. Haynes as special tax counsel and accountant (ECF No. 27) be denied.

Dated: April 26, 2016

CAROLINE D. CIRAOLLO
Acting Assistant Attorney General

/s/ Boris Kukso
BORIS KUKSO
Trial Attorneys, Tax Division
U.S. Department of Justice
P.O. Box 310
Washington, D.C. 20044

202-353-1857 (v)
202-307-0054 (f)
Boris.Kukso@usdoj.gov

Of Counsel:
DANA J. BOENTE
United States Attorney

CERTIFICATE OF SERVICE

I hereby certify a copy of foregoing UNITED STATES' OPPOSITION TO DEBTORS' APPLICATION TO EMPLOY SPECIAL TAX COUNSEL will be filed with the United States Bankruptcy Court electronically in the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Date: April 26, 2016

/s/ Boris Kukso
BORIS KUKSO
Trial Attorney